



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. PD-1124-20

JACE MARTIN LAWS, Appellant

v.

THE STATE OF TEXAS

**ON DISCRETIONARY REVIEW ON
THE COURT'S OWN MOTION
FROM THE SIXTH COURT OF APPEALS
GREGG COUNTY**

HERVEY, J., delivered the opinion of the unanimous Court.

O P I N I O N

Appellant, Jace Martin Laws, was charged with two counts of assaulting a peace officer. When defense counsel received the proposed jury charge, he learned that the judge intended to require an alternate juror to retire with the jury while it deliberated. Appellant objected to the alternate juror's presence during deliberations, and the trial judge overruled the objection. Appellant was subsequently convicted and sentenced to thirty years' confinement for the first assault and forty years' confinement for the second

assault. Appellant appealed and argued that the trial court erred under Article 36.22 of the Texas Code of Criminal Procedure. TEX. CODE CRIM. PROC. art. 36.22. That article states, “No person shall be permitted to be with a jury while it is deliberating. No person shall be permitted to converse with a juror about the case on trial except in the presence and by the permission of the court.” *Id.* The court of appeals refused to address the merits of Appellant’s claim, instead holding that his trial objection was too general to preserve error. *Laws v. State*, 629 S.W.3d 350, 363 (Tex. App.—Texarkana 2020). The court of appeals claimed that Appellant’s objection was general because he could have been referring to a constitutional claim that alternate jurors cannot be present during deliberations based on the “No More Than Twelve Jurors” Clause of Article V, Section 13 of the Texas Constitution.¹ The court of appeals also faulted Appellant for not saying “Article 36.22” when he objected. *Id. Id.* at 363.

To preserve error for appellate review, a defendant must make a timely request, objection, or motion stating the grounds upon which he is entitled to a favorable ruling. TEX. R. APP. P. 33.1(a)(1). The request, objection, or motion must be sufficiently specific to alert the trial court to the nature of the complaint unless the grounds were apparent from the context. *Id.* (a)(2). The objection need only provide the trial judge and opposing counsel an opportunity to address and, if necessary, correct the purported error. *Ford v.*

¹Article V, Section 13 of the Texas Constitution states in part that, “Grand and petit juries in the District Courts shall be composed of twelve persons, except that petit juries in a criminal case below the grade of felony shall be composed of six persons” TEX. CONST. art. V § 13.

State, 305 S.W.3d 530, 533 (Tex. Crim. App. 2009). The party need not use “magic words,” and while references to a statute might “help to clarify an objection that might otherwise be general or obscure . . . ,” “an objection is not defective merely because it does not cite . . .” a particular statute. *Id.* To preserve an Article 36.22 claim for appellate review, a defendant must object as soon as the issue becomes apparent. *Becerra v. State*, 620 S.W.3d 745, 747 (Tex. Crim. App. 2021); *see Trinidad v. State*, 312 S.W.3d 23, 29 (Tex. Crim. App. 2010) (Article 36.22 claim forfeited because the appellant failed to object after the trial judge said in open court that he would require the alternate juror to retire with the jury). There is no dispute here that Appellant objected at his earliest opportunity.

At the beginning of the jury charge hearing, the following exchange took place:

[COURT]: . . . We spent about an hour and a half going over the Court’s Charge. And at this time I’ve provided both sides with the final version. Does the State have any objections at this time?

[PROSECUTOR]: No, Your Honor.

[JUDGE]: Okay. Does the Defense have any objections?

[DEFENSE COUNSEL: #1]: A couple of objections, Judge.

[COURT]: Okay.

[DEFENSE COUNSEL #1]: On page 9, the next-to-the-last statement where it’s allowing a juror, the alternate juror, to remain in the jury room.

[COURT]: Okay.

[DEFENSE COUNSEL #1]: Now I know there’s -- and you’re instructing

him not to speak, but, I mean, I think there's just too much of a risk and the danger for them to bring input. We can't police that. We just have to trust that. I think out of an abundance of caution I think we need to do like we always do and ask them to maybe go downstairs and wait in the room. And I don't think it's really wasting that much time if -- I don't anticipate something happening to a juror; but if it does, I don't think it's going to take long for him to catch up. But I just think the danger of possible abuse of that is just too -- it's too high, Judge, and I am going to object to that. As well as make an objection to the denial of the request of a lesser-included offense of resisting arrest in this case.

[COURT]: Okay. Here's -- let's -- let me start with the second one and then go forward. I'm going to deny the motion for lesser-included for resisting arrest. Now, here's my position on the alternate juror. If the State says they concur with the Defense, then I'll remove those two paragraphs, and --

[PROSECUTOR]: Your Honor, I guess the State's position would be -- I think this is how you've done this since you took the Bench, this is our standard for the calendar year 2019. I'm going to defer -- we not have been objected to previously, it's never actually occurred in any jury trial I've ever done right here.

[COURT]: Right.

[DEFENSE COUNSEL #1]: And I just have a fear, Judge. I mean, we're asking for the fairest trial that we can get.

[COURT]: Right.

[DEFENSE COUNSEL #1]: I just -- we can't police it. We don't know --

[COURT]: I understand.

[DEFENSE COUNSEL #1]: And I would just worry about that. I just don't see a problem with having them stay downstairs.

[PROSECUTOR]: State's going to defer to the Court.

[COURT]: Okay. I'm just -- you know, Mr. Hurlburt, I know you've been practicing law a long time, so have I.

[DEFENSE COUNSEL #1]: You have.

[COURT]: You know, I guess I'll take judicial notice of who breaks the law. This is just the new way because what happens is if one of the jurors was sick, one of them can't serve, then the jury has to basically start all over. And I understand your -- you make a good valid point about the danger. I've done this several times before, it's never been an issue. So I'm going to --

[DEFENSE COUNSEL #1]: I just -- Judge, I understand maybe taking a little extra time to get them caught up. But, you know, maybe what, 10, 15 minutes when you're talking about a person possibly getting life on a case. I don't think that's too much to ask for.

[COURT]: Okay.

[DEFENSE COUNSEL #1]: I just worry about -- I worry about that. I mean, just because it's a new way doesn't mean it's a good way, you know.

[COURT]: Yeah. Okay. I'm going to proceed the way it is. Anything else from the State?

[PROSECUTOR]: Nothing from the State, Your Honor.

[COURT]: Okay. Defense?

[DEFENSE COUNSEL #1]: No, Your Honor.

The record shows that the legal ground for Appellant's objection was apparent to the prosecutor and the trial judge. Appellant repeatedly said that the alternate juror should not be allowed to retire with the jury because the danger that the alternate juror might participate in the deliberations was too high, that possible violations could not be "policed," and that he did not understand why the alternate could not be in another room and "brought up to speed" in the unlikely event that a juror became disabled. The prosecutor said that he believed the law allowed for alternate jurors to be present during

deliberations, and the trial judge said that he would require the alternate juror to be present during the jury’s deliberations because “[t]his is just the new way” No one mentioned Article V of the Texas Constitution or whether the presence of an alternate juror violated Appellant’s right to a twelve-person jury.

The State argues that Appellant had to seek a mistrial or file a motion for new trial supported by an affidavit to preserve his complaint because an Article 36.22 claim is a juror-misconduct claim, and it notes that Appellant never moved for a mistrial, and while he filed a motion for new trial, it had nothing to do with juror misconduct. For support, the State directs us to a decision from this Court and decisions from three courts of appeals. *See Becerra*, 620 S.W.3d at 747; *Castillo v. State*, 319 S.W.3d 966, 970 (Tex. App.—Austin 2010, pet. ref’d); *Menard v. State*, 193 S.W.3d 55, 59 (Tex. App.—Houston [1st Dist.] 2006, pet. ref’d.); *Hendrix v. State*, No. 05-18-008220CR, 2020 WL 3424915, at * (Tex. App.—Dallas 2020, no pet.) (mem. op., not designated for publication).

A claim that the presence of an alternate juror while the jury deliberates violates Article 36.22 is not the same sort of claim as an allegation of juror misconduct during deliberations.² Requiring a defendant to seek a mistrial or file a motion for new trial

²The cases cited by the State are distinguishable or support our position. *Becerra* dealt with potential juror misconduct by an alternate juror during deliberations. *Becerra*, 620 S.W.3d at 747. *Castillo* was about the presence of an alternate juror during deliberations, but the court of appeals in that case mistakenly relied on *Ocon v. State*, 284 S.W.3d 880 (Tex. Crim. App. 2009) and *Trout v. State*, 702 S.W.2d 618, 620 (Tex. Crim. App. 1985), which were about potential juror misconduct that became apparent only after the juries retired to deliberate. *Castillo*, 319

makes sense if a defendant learns of potential juror misconduct after the jury retires to deliberate or after the trial concludes, but unlike Appellant's Article 36.22 claim, those types of misconduct claims require extrinsic evidence. That is, proof of misconduct. Here, no such proof is necessary because Appellant's claim is only about the mere presence of the alternate juror during deliberations, an issue which was heavily litigated before the alternate retired with the jury. Further, it would have been futile to require Appellant to have sought a mistrial or file a motion for new trial because the trial judge was already aware of the facts and law and overruled Appellant's objection. Once Appellant obtained the adverse ruling, his issue was preserved for appellate review. *See Trinidad*, 312

S.W.3d at 29.

CONCLUSION

While we also granted review to determine if Article 36.22 was violated when the alternate juror retired with the jury while it deliberated, and if so, whether Appellant was harmed, we decline to address those issues at this time. Instead, we will remand this cause for the court of appeals to address the merits of Appellant's claim in the first instance.

Delivered: February 2, 2022

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S.W.3d at 970. *Hendrix* supports our position. The court of appeals in that case found that the appellant did not preserve his Article 36.22 claim because he did not object as soon as he learned that an alternate juror was going to retire with the jury. *Hendrix*, 2020 WL 3424915, at *3-4. Here, as we have noted, everyone agrees that Appellant objected at his earliest opportunity, which is when he received the proposed jury charge from the trial judge.